

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE AUTOMOTIVE PARTS
ANTITRUST LITIGATION

:
: Master File No. 12-md-02311
: Honorable Marianne O. Battani
:

THIS RELATES TO:

Direct Purchaser Actions
Automobile Dealership Actions
End Payor Actions
Truck and Equipment Dealership Actions

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**DEFENDANTS' MOTION TO FILE AND
MAINTAIN INFORMATION UNDER SEAL**

Pursuant to the Sixth Circuit's decision in *Shane Group, Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299 (6th Cir. 2016), and the Court's subsequent instructions at the September 14, 2016 status conference, the undersigned Defendants respectfully request that the Court maintain under seal Section I of Defendants' Statement Regarding Appointment of Mediation Facilitator, which contains Defendants' positions with respect to specific Mediation Facilitator candidates. Defendants submit the attached memorandum in support of this motion. Pursuant to Local Rule 7.1(a), Defendants sent an email to counsel for Plaintiffs today asking if they agreed with the relief sought in this motion; Plaintiffs did not concur in the relief sought.

Respectfully submitted,

Dated: February 1, 2017

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE AUTOMOTIVE PARTS
ANTITRUST LITIGATION

:
: Master File No. 12-md-02311
: Honorable Marianne O. Battani

THIS RELATES TO:

Direct Purchaser Actions
Automobile Dealership Actions
End Payor Actions
Truck and Equipment Dealership Actions

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION
FOR LEAVE TO FILE AND MAINTAIN INFORMATION UNDER SEAL**

STATEMENT OF THE ISSUES PRESENTED

Should the Court keep sealed from public view Defendants' positions with respect to certain Mediation Facilitator candidates where there is no public interest in the identities of candidates Defendants have proposed or Defendants' position on candidates that Plaintiffs have proposed, and disclosure of this information could prejudice Defendants in upcoming mediation sessions?

ANSWER: Yes.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc., 332 F.3d 976, 980 (6th Cir. 2003)

Defendants respectfully request that the Court maintain under seal Section I of Defendants' Position Statement Regarding Appointment of Mediation Facilitator, which contains Defendants' positions with respect to specific Mediation Facilitator candidates. This Court has discretion to seal its records "when interests of privacy outweigh the public's right to know." *In re Knoxville News-Sentinel Co., Inc.*, 723 F.2d 470, 474 (6th Cir. 1983).

Here, there is no reason that Defendants' positions with respect to potential Mediation Facilitators should be a matter of public record. The mediation process ordered by the Court at the January 25, 2017 status conference will not include non-party members of the public. Indeed, the entire process of engaging in mediation and negotiating potential settlements will remain confidential, consistent with the Sixth Circuit's protection of the "strong public interest in favor of secrecy of matters discussed by parties during settlement negotiations." *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980 (6th Cir. 2003); *see also* Local Rule 16.3(d) ("Communications in ADR proceedings are confidential"). Because discussions with the Mediation Facilitator will happen consistent with established principles of confidentiality, the public also has no interest in the positions parties took with respect to the identity of that Mediation Facilitator. By contrast, disclosure of Defendants' positions with respect to the identity of the Mediation Facilitator could prejudice Defendants in mediation who were on public record supporting or opposing that Mediation Facilitator.

As there is no public interest in Defendants' positions with respect to Mediation Facilitator candidates and a clear risk of prejudice to Defendants of disclosing those positions publicly, Defendants respectfully request that the Court seal Section I of Defendants' Position Statement.

Respectfully submitted,

Dated: February 1, 2017

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ANTITRUST LITIGATION

:
: Master File No. 12-md-02311
: Honorable Marianne O. Battani
:

THIS RELATES TO:

Direct Purchaser Actions
Automobile Dealership Actions
End Payor Actions
Truck and Equipment Dealership Actions

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2017, I caused the foregoing Defendants' Motion to File and Maintain Information Under Seal to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notifications of such filings to all counsel of record.

/s/ Howard. B. Iwrey

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